

WOMBLE
CARLYLE
SANDRIDGE
& RICE

A PROFESSIONAL LIMITED
LIABILITY COMPANY

Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005

Telephone: (202) 467-6900
Fax: (202) 467-6910
Web site: www.wcsr.com

Howard J. Barr
Direct Dial: (202) 857-4506
Direct Fax: (202) 261-0006
E-mail: hbarr@wcsr.com

RECEIVED

July 8, 2004

JUL - 8 2004

Federal Communications Commission
Office of Secretary

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, TW A325
Washington, D.C. 20554

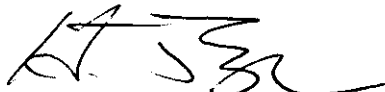
**Re: A La Carte and Themed Tier Programming and Pricing Options for
Programming Distribution on Cable Television and Direct Broadcast
Satellite Systems; MB Docket No. 04-207**

Dear Ms. Dortch:

Transmitted herewith on behalf of Eternal Word Television Network, Inc. is an original and four copies of its "Comments" for submission in the above-referenced matter.

Should any questions arise concerning this matter, please contact this office directly.

Respectfully submitted,


Howard J. Barr

Enclosure

cc: Service List

No. of Copies rec'd
List ABCDE

04

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

RECEIVED
JUL - 8 2004
Federal Communications Commission
Office of Secretary

A La Carte and Themed Tier)
Programming and Pricing Options)
For Programming Distribution on)
Cable Television and Direct Broadcast)
Satellite Systems)

MB Docket No. 04-207

To: The Commission

COMMENTS OF ETERNAL WORD TELEVISION NETWORK, INC.

Eternal Word Television Network, Inc. ("EWTN"), by counsel, hereby submits its Comments in response to the Commission's Public Notice, DA 04-1454, released May 25, 2004 seeking comment on questions regarding the provision of *a la carte* and "themed-tier" services on cable television and direct broadcast satellite ("DBS") systems (collectively "MVPDs"). The following is submitted.

I. BACKGROUND

1. By way of background, EWTN is the world's largest religious media programming network. EWTN is a 501(c)(3) non-profit organization providing television programming from a Catholic perspective to over 104 million homes in 114 countries and territories worldwide. EWTN's 24-hour programming includes telecasts of religious services, as well as thought-provoking documentaries, children's programming, informative talk shows on moral and social issues and other programs and specials.

2. EWTN is unique in the programming industry. To its knowledge, EWTN is among the very few nationally distributed cable television networks which are almost entirely donation supported. EWTN does not charge per subscriber license fees to its cable or DBS operator distributors nor does it sell any advertising. EWTN's programming is 100% advertising free. Additionally, EWTN receives no financial support from the Roman Catholic Church. EWTN operates much more akin to the PBS model in that it relies almost entirely upon contributions from viewers.

II. EWTN HAS NOT HISTORICALLY BEEN AVAILABLE ON AN *A LA CARTE* BASIS

3. EWTN has not historically offered itself to MVPDs or allowed itself to be offered by MVPDs on an *a la carte* or standalone basis. EWTN launched in 1981 when cable television was still a relatively nascent industry. It is unlikely that EWTN would have achieved the stature and status it enjoys today had it not been bundled with the then existing basic cable networks. While there have been significant advances in cable technology since EWTN's introduction, it still remains a basic truth that most networks require similar distribution to attract the necessary viewership and advertising support in order to ultimately be a success.

4. Programmers operating within the per-subscriber license fee/advertiser supported dual revenue stream model are dependant upon wide distribution. *A la carte* would undermine that model by substantially reducing audience reach and viewership resulting in a reduction of both license fees and advertising revenue.¹ Meanwhile, the programmer will continue to incur the

¹ U.S. Gen. Accounting Office, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, at 35 (October 2003) ("*GAO Report*") ("any movement of networks from the most widely distributed tiers to an *a la carte* format could result in a reduced amount that advertisers are willing to pay for advertising time"), available at <http://www.gao.gov/new.items/d048.pdf>.

same fixed costs related to purchasing and developing programming and marketing and distributing the network. *A la carte* pricing will not reduce a network's program production costs and will in fact negatively impact a programmer's ability to generate the subscription and advertising fees to cover its costs.²

5. As discussed above, EWTN does not operate within the per-subscriber license fee/advertiser supported construct. But that does not change the fact that EWTN depends upon broad distribution by MVPDs to subscribers. While there is certainly an economic necessity to broad distribution, EWTN's desire/need to be distributed on the lowest cost/most widely distributed tier of service is driven by more than economic necessity.

6. EWTN's mission is to be a source of hope, inspiration and guidance to people not just of the Catholic faith, but to people of all faiths or no faith. EWTN can realize this mission only by reaching as wide an audience as possible.

7. *A la carte* compromises EWTN's mission and will significantly diminish its ability to reach a wide audience. *A la carte* would drastically diminish the number of homes into which the network is transmitted and available and would therefore likely drastically diminish viewer support upon which the network relies for its very existence. But more importantly, *a la carte* would also dramatically reduce EWTN's ability to carry out its mission of service to the community.

8. While one might suspect that EWTN, given its focus on the Catholic faith, is a narrowly viewed network, EWTN has empirical evidence to the contrary. For example,

² GAO Report at 36 ("some cable networks, especially small and independent networks, would not be able to gain enough subscribers to support the network").

approximately one fourth of the viewer contributions received by EWTN are derived from sources other than individuals on EWTN's mailing list and who would be considered core EWTN viewers. The fact that such a significant portion of EWTN's contributions are derived from sources other than "core viewers" is demonstrative of the fact that EWTN is regularly sampled by MVPD subscribers and that those sampling the network's programming are appreciative of that programming and supportive of EWTN's mission.

9. Contributions from these non-core viewers are often accompanied by letters describing how EWTN's programming touched or affected the viewer or provided guidance in a time of need. In an *a la carte* world, EWTN's ability to reach out and touch such non-core viewers will be drastically curtailed. No one will benefit.

10. While certainly a significant number of its regular viewers are of the Catholic faith, comments and letters received by EWTN reflect that the network is regularly sampled and viewed by members of other faiths, Christian and non-Christian. EWTN believes that the wide availability of its thought-provoking programming plays a significant role in bridging the gap between members of different faiths by lending to a greater sense of cooperation and understanding of the Catholic faith, something sorely needed in a world too often filled with religious strife. Again, EWTN's ability to serve this function would be significantly curtailed were the network to be moved from a widely distributed tier to an *a la carte* format.

11. As for EWTN's core viewers, i.e., those that make up the remaining three fourths of EWTN's contributions, certainly a number of them contribute not only because they enjoy and appreciate the programming, but they do so in order to support the network's mission of communicating to the largest number of people possible. A movement of the network from a

widely distributed tier to an *a la carte* format could result in a reduction in contributions received even from EWTN's core viewers because of the reduction in the number of people available to watch the network.

12. As discussed above, even though EWTN does not rely on the dual stream model, it still stands to be as negatively affected by *a la carte* as are programmers that do operate under that model. Much like *a la carte* will undermine programmers operating under the dual stream model by reducing audience reach and viewership and therefore license fees and advertising revenue (but without any corresponding reduction in costs), *a la carte* will likewise reduce EWTN's audience reach and therefore its ability to generate viewer contributions.

13. Like programmers operating under a dual stream model, EWTN faces certain fixed costs to produce, acquire and distribute its programming. *A la carte* distribution will not result in a decrease of any of these costs and will drastically impair its ability to meet these costs.

IV. DIVERSITY WILL SUFFER UNDER *A LA CARTE*

14. Programming diversity will clearly suffer under *a la carte*. First, a tier of programming services rich in differing program genres by its very nature contributes to diversity. Under the current model wherein MVPD customers subscribe to tiers of service, MVPD customers can easily navigate between a variety of programming networks, such as sports networks, educational networks, religious networks, and networks devoted to children, women, men, news, various ethnic groups, science, public affairs, history, music, technology, cartoons, game shows, comedy, classic movies, classic television and the list goes on and will likely continue to grow.

15. For better or for worse, we are a nation of channel surfers. But our ability to surf and enjoy and to be enriched by programming discovered in the course of surfing will be significantly diminished under an *a la carte* format. Gone, for example, will be the ability to easily switch from a game turned into a route to a classic movie on one of the classic movie networks or to the programming on any one of the vast array of networks, including EWTN, currently available on basic and expanded basic tiers of service if the customer does not happen to subscribe to that network.

16. Perhaps more importantly, lost to that network will be the opportunity to gain a viewer. A simple game of dominoes ensues: lost or lack of viewership leads directly to a lack of viability; lack of viability leads directly to diminished program options – either through the loss of existing networks or the development of new networks; diminished program options equals a loss of diversity. From EWTN's perspective, movement to an *a la carte* model will result in the reshaping of MVPD lineups from a model that does an extremely good job of broadly serving community needs and interests into one that will be merely a contest between channels as to which one can generate the most *a la carte* revenue. This is counterproductive to diversity and to the public interest.

17. As discussed above, most cable networks require distribution on widely available tiers of service in order to attract the necessary viewership and advertising support in order to be successful. This model has led to the development of the vast array of programming options now made available to MVPD subscribers.

CONCLUSION

18. *A la carte* is a “throw out the baby with the bathwater” proposition that is ripe with unintended consequences including increased equipment costs and, potentially, no overall decrease in the charges subscribers pay for their programming. Indeed, the General Accounting Office has already concluded that *a la carte* would “result in higher per-channel rates” for consumers.³ In the case of EWTN it would also result in the elimination from basic or expanded basic service of a free programming network which requires no license fee from the MVPD and therefore imposes no economic burden to the consumer.

19. The outcome of the wholesale restructuring that *a la carte* would require is at best uncertain and at worst potentially harmful to consumers. The GAO itself has concluded that “it is difficult to ascertain how many consumers would be better off and how many would be made worse off under an *a la carte* approach.”⁴

20. The abundance and diversity of programming and program networks that Americans enjoy today has been made possible by program packages, i.e., tiers. The combination of new networks with established networks has allowed new networks to be sampled by consumers so they can find an audience, providing a critical financial base for new networks. There is greater program diversity today than at any point in history and that state of affairs is directly related to

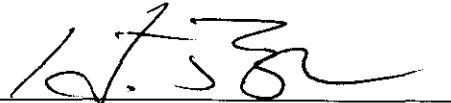
³ GAO Report at 30, 36.

⁴ GAO Report at 6.

the tiering model. EWTN urges the Commission to reject any impetus to impose or support the imposition of *a la carte* programming.

Respectfully Submitted,

**ETERNAL WORD TELEVISION NETWORK,
INC.**

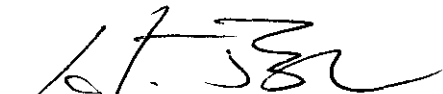
By: 
Howard J. Barr
Its Counsel

Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, N.W.
Seventh Floor
Washington, D.C. 20005
(202) 857-4400

CERTIFICATE OF SERVICE

I, Howard J. Barr, do hereby certify that I have on this 8th day of July, 2004, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing "Comments of Eternal Word Television Network, Inc." to the following:

Ben Golant
Federal Communications Commission
Media Bureau
445 12th Street, S.W., Suite 4A-803
Washington, D.C. 20554


Howard J. Barr